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October 17, 2008

Phil Isenberg, Chair
Delta Vision Blue Ribbon Task Force
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Delta Vision Strategic Plan – Fifth Draft Dated October 9, 2008

Dear Chair Isenberg:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC), I am pleased to submit for your consideration comments on the Fifth Draft of the Delta Vision Strategic Plan (Strategic Plan). Unlike our previous submittals these comments will be limited to those issues of greatest concern to RCRC.

Co-Equal Goals/Areas of Origin Assurances

The Task Force has established the restoration of the Delta ecosystem and a reliable water supply as co-equal goals. As we have previously commented, RCRC does not disagree with these as “goals”, but is extremely concerned with the “Delta-centric” nature of the Task Force’s recommendations, especially in light of the proposed governance structure. RCRC believes that the Delta-centric nature of the recommendations contained in the Strategic Plan is exactly why the Strategic Plan must specifically include adequate assurances that programs or facilities implemented or constructed in the Delta will not result in redirection of unmitigated significant impacts to upstream beneficial uses in the areas/counties/watersheds of origin.

The Strategic Plan also proposes both new water storage and new/improved water conveyance, thus carrying forward the policies of state water development of which the areas/counties/watersheds of origin statutes were integral parts. Additionally, the Strategic Plan recommends that facilities built to improve the existing water conveyance system and expand statewide storage be operated to achieve the co-equal goals. Express recognition and reiteration that the future water needs for water in the counties and watersheds in which this water originates will not be jeopardized is as essential to contemporary water resources planning as it was to the original California Water Plan and should be included in the Strategic Plan.

RCRC is not alone in calling for area of origin protections to be included in the Strategic Plan. Among others, the statewide Association of California Water Agencies in their September 5 comment letter to the Task Force stated “*Area of Origin Protections: To protect the interests of upstream areas, the Strategic Plan must commit to appropriate area of origin water right protections.*”

The Strategic Plan recommends that the co-equal goals be: 1) written into the California Constitution; 2) written into statute and incorporated into the mandated duties and responsibilities of all state agencies with significant involvement in the Delta; and, 3) advanced in all water, environmental and other bonds that directly or indirectly fund activities in the Delta. RCRC's position on the Task Force recommendations is as follows:

- RCRC is in opposition to including the co-equal goals in the California Constitution unless the existing law relating to the areas/counties/watersheds of origin is included in the California Constitution at the same time.
- RCRC is in opposition to including the co-equal goals into statute unless the statute also includes: 1) adequate assurances that programs or facilities implemented or constructed in the Delta will not result in redirection of unmitigated significant impacts to upstream beneficial uses in the areas/counties/watersheds of origin; and, 2) recognition and reiteration that the future water needs for water in the counties and watersheds in which this water originates will not be jeopardized.
- RCRC is in opposition to the concept of the co-equal goals being incorporated into the mandated duties and responsibilities of the relevant state agencies – state agencies such as the State Water Resources Control Board, the Department of Fish and Game, and the Department of Water Resources must take a broader statewide view and not be constrained by the Task Force's Delta-centric focus.
- RCRC does not disagree that bonds that fund activities in the Delta should advance the co-equal goals so long as programs or facilities implemented or constructed in the Delta will not result in redirection of unmitigated significant impacts to upstream beneficial uses in the areas/counties/watersheds of origin.

Governance

The Task Force proposes a new multi-part governance structure as follows:

- California Delta Ecosystem and Water Council (CDEW Council)
- Delta Protection Commission (additional authority)
- Delta Conservancy
- Delta Science Program
- Independent Delta Science and Engineering Board
- Public Advisory Group
- Independent Board (track performance measures and issue a Delta Vision Report Card on a regular basis)
- A (likely) new public entity responsible for operations and maintenance of the SWP

While the Task Force has pared down the number of entities somewhat in its proposed governance structure, RCRC is still of the opinion that the Task Force has put forward an overly complex and costly governance structure.

CDEW Council/CDEW Plan

RCRC is in opposition to the creation of a CDEW Council with the proposed responsibilities and authorities. RCRC believes that the proposed powers of the CDEW Council are overreaching. RCRC is also in opposition to the proposed creation of a “*legally enforceable*” CDEW Plan “*...to achieve the goals of our Vision and this Strategic Plan.*” This opposition stems from the “Delta-centric” nature of the Task Force recommendations.

The Strategic Plan calls for the CDEW Council to “*...ensure proposed actions by any state agency are consistent with the plan...*” and to allocate funds to programs and projects

consistent with the CDEW Plan. As noted earlier, when making decisions state agencies must take a broader statewide view and not be constrained by the Task Force's Delta-centric focus. The Strategic Plan proposes that the CDEW Council be authorized to terminate or reduce funding *"...for any federal, state or local agency that conducts activities inconsistent with the new Delta Plan or the policies of the Council."* RCRC opposes the delegation of funding authority to the CDEW Council.

RCRC notes that while the proposed authority of the CDEW Council to issue cease-and-desist orders has been deleted, that the authority to sue to ensure compliance of federal and state agencies with the CDEW Plan remains in the document. Specific mention of suing local agencies has been deleted, although that gives local governments little comfort. RCRC does appreciate the new mention of adopting procedures for use of alternative approaches to dispute resolution.

RCRC is in opposition to the proposed CDEW Council being designated a Trustee Agency. The proposed Council would not have to be a Trustee Agency to participate in CEQA processes. Having an entity such as the proposed "Delta-centric" CDEW Council designated a Trustee Agency could result in a clash with existing state agencies, such as the Department of Fish and Game, who must consider the impact of activities, programs and facilities on all public trust resources. As the Department of Fish and Game stated in their September 25 comment letter to the Task Force *"Nothing in the Plan can or should impact the Department's independent regulatory function and duty to protect the state's listed species. With the Department as the State's statutorily-designated trustee for fish and wildlife, it is not appropriate to further delegate these duties to this new entity."*

The Strategic Plan recommends that the Legislature adopt legislatively the Strategic Plan as the Interim Plan for the Delta. RCRC is in opposition to this recommendation as the Strategic Plan contains numerous fundamental flaws, many of which RCRC has pointed out in previous comments. As stated previously, RCRC is in opposition to the creation of the CDEW Council and CDEW Plan as proposed in the Strategic Plan. Decision making and funding decisions should be carried out by the designated implementing agencies under their existing authorities with clear direction provided by the Administration and the Legislature, and the fiscal means to accomplish their charge.

Among other things, the Strategic Plan calls for the identification of any inconsistencies in the State Water Resources Board's Water Quality Control Plans and the proposed Delta Plan and to *"...address any inconsistencies."* As the State Water Board pointed out in their September 30 comment letter on the proposed governance structure *"...under existing law, the State Water Board must independently exercise its regulatory and quasi-judicial authority and responsibility in considering water quality control plan amendments and related adjudicative proceedings."* RCRC opposes any interference with the State Water Board's independent authority. RCRC also agrees with the State Water Board about *"...the potential for competing or redundant activities"* between the State Water Board and the CDEW Council governance authority, as proposed.

The Strategic Plan, among other things, states that the State Water Board "should": 1) revise the Bay-Delta Water Quality Control Plan to include new spring Delta outflow objectives by 2012; 2) revise the Bay-Delta Water Quality Control Plan to require fall outflows to provide habitat equivalent to the pre-2000 period; 3) revise the State Water Board's Vernalis flow objectives and the criteria for the Central Valley project and the State Water Project by 2012

for implementation in 2015 to increase San Joaquin River Flows between February and June; and, 4) provide short-duration San Joaquin pulse flows in the fall starting in 2015. RCRC believes it would be more appropriate for the Task Force to recommend that the State Water Board should “consider” as opposed to “should” take any specific action. As the State Water Board pointed out in their September 30 comment letter *“In making any water quality control plan amendments, the State Water Board’s determination must be supported by evidence in the record before it.”*

RCRC is in agreement with the Natural Heritage Institute who in their October 2 comment letter to the Task Force stated *“In sum, it is hard to see what the Council adds other than another layer of bureaucracy.”*

As noted in RCRC’s comments dated September 2, if a CDEW Council is to be created it should include representatives from the areas of origin, the Delta, water exporters, as well as provide oversight, and be advisory in nature. Agencies responsible for implementing actions should be provided with clear direction by the Administration and the Legislature and the fiscal means to accomplish their charge. To improve regulatory coordination in the Delta, RCRC agrees with the suggestion put forward by other stakeholders that consideration should be given to the creation of a new and adequately funded Division of Delta Resources within the State Water Resources Control Board.

California Delta Conservancy

Unlike the creation of the proposed CDEW Council, there appears to be widespread agreement with the creation of a new Delta Conservancy. RCRC believes that a good model for the Delta Conservancy would be the Sierra Nevada Conservancy as it includes both local and federal representatives.

Delta Science and Engineering Program/Delta Science and Engineering Board

The Strategic Plan proposes the Delta Science and Engineering Program as a replacement for the CALFED Science Program and the Delta Science and Engineering Board as a replacement for the CALFED Independent Science Board. RCRC believes that there is great value in providing policy makers and state agencies with the best available scientific information to inform their decision-making. RCRC does not believe that the scope of any successor body or bodies should be limited to scientific issues “...relevant to Delta management.” RCRC also suggests that consideration be given to including a lawyer and an economist on any panel to provide guidance on how their scientific recommendations would be translated into (or constrained by) legal and policy directives.

Please refer to RCRC’s previously submitted comments dated October 16, 2007, November 9, 2007, July 23, 2008, September 2, 2008, and September 30, 2008 for detailed comments on other aspects of the proposed Strategic Plan.

Sincerely,

Kathy Mannion

Kathy Mannion

Director of Water and Power

cc: Governor Arnold Schwarzenegger
John Moffatt, Deputy Legislative Secretary, Office of the Governor
Members, Delta Vision Blue Ribbon Task Force
Mike Chrisman, Secretary, California Resources Agency
Linda Adams, Secretary, California Environmental Protection Agency
A.G Kawamura, Secretary, California Department of Food and Agriculture
Dale Bonner, Secretary, California Business, Transportation, and Housing Agency
Michael Peevey, President, California Public Utilities Commission
Director Lester Snow, Department of Water Resources
Director Joe Grinstaff, California Bay Delta Authority
Members, State Water Resources Control Board